

**Environmental Quality Commission  
Minutes for Public Meeting  
July 30, 2002  
Contaminated Waste Sites  
Room 129, Capitol Annex, Frankfort**

**EQC Commissioners and Staff Present**

Aloma Dew, Chair  
Betsy Bennett, Vice-Chair  
Bob Riddle

**Staff**

Leslie Cole, Director  
Erik Siegel, Assistant Director  
Lola Lyle, Research Analyst  
Frances Kirchhoff, Administrative Assistant

**Speakers/Representatives Present**

Rob Daniell, Director, Division of Waste Management  
Brad Stone, Program Planning, Div. Waste Management

**Commissioners not attending**

Gary Revlett  
Patty Wallace  
Serena Williams  
Jean Dorton

**Opening Remarks**

Environmental Quality Commission (EQC) Chair Aloma Dew opened the meeting at 1:00 p.m. The focus of the meeting was to review contaminated waste sites and state actions to address these sites.

Ms. Dew stated that in Kentucky, hundreds of old or abandoned waste sites pose threats to the environment and public health. To date more than 3,000 potentially contaminated waste sites have been identified. Of the 2,500 sites investigated, 95 percent had confirmed contamination. An estimated 57 percent of these sites have been remediated by the state or responsible parties. A number of these sites are considered brownfields. Brownfields are abandoned, idle, or under-used industrial or commercial facilities where redevelopment is complicated by environmental contamination. A recent study underway in Northern Kentucky predicts there may be more than 200 old brownfield sites in Kenton County alone. Kentucky is also the home to hundreds of old abandoned landfills. An estimated 500 old landfills still require attention to address contamination problems and properly close these sites.

EQC invited Rob Daniell, Director of the Kentucky Division of Waste Management (DWM) to review state efforts to address contaminated waste sites in Kentucky. He also reviewed recent measures passed to address these sites including implementation of House Bill 174 to cleanup old landfills, proposed regulations to promote the redevelopment of brownfields, and the extension of the Hazardous Waste Management Fund to assist with site cleanups. Mr. Daniell also reviewed major constraints and issues facing the state's efforts to address contaminated waste sites and to respond to recent recommendations EQC made concerning the Maxey Flats Radioactive Waste Superfund Act. Mr. Daniell, accompanied by Brad Stone, gave a power point presentation briefing the Commission on waste management issues.

**House Bill 174 and its implementation**

House Bill 174 (HB 174) was passed in the 2002 legislative session to begin to address the issue of old solid waste landfills, open dumps and roadside litter. It has three avenues for revenue:

1. \$25 million bond sale will address remediation of old landfills;
2. \$5 million per year from the Kentucky Transportation Cabinet to be disbursed by the Natural Resources and Environmental Protection Cabinet (NREPC) as grants to counties for anti-litter efforts; and

3. Beginning January 1, 2003, a tipping fee of \$1.75 per ton shall be assessed for all solid waste disposed at municipal solid waste disposal facilities. Fees are collected and deposited into the Kentucky PRIDE fund and will be administered by NREPC.

HB 174 requires the Ky. NREPC to:

1. Develop an implementation plan for closure and remediation at old landfills and present the plan to the Interim Joint Committee for Appropriations of Revenue (IJCAR) by July 1, 2003. (An old landfill sometimes called orphan or historic, is defined as waste disposal site in operation and ceased accepting waste prior to July 1, 1992—the date the new technical standards for contained landfills were incorporated into law.)
2. Develop a plan for state assumption of responsibility for closure and remedial obligations of old landfills. The plan must be presented to the IJCAR by 12/31/03
3. Develop a plan for closure and remediation of all identified abandoned solid waste sites and facilities. Plan must be presented to IJCAR by 12/31/04. (These are old, historical, orphaned landfills--not to be confused with illegal dumps.)

Mr. Daniell reported that Division of Waste (DWM) field inspectors have traveled the roads of every county to identify and locate old landfills. The DWM has used historical information to locate where some of these old sites are located.

The PRIDE fund money will be spent as follows:

1. \$5 million per year will go to the NREPC to be spent
  - a. \$2.5 million for debt service on the bond issue
  - b. \$2.5 million for direct costs associated with site identification, characterization, and corrective action assessments of old landfills
2. Remaining tipping fees collected (approximately \$4.8) will go to counties for illegal open dump cleanup
3. Interest in the Kentucky PRIDE Fund up to \$1 million per year will go to the Kentucky Environmental Education Council
4. \$5 million per year transferred from the Kentucky Transportation Cabinet will be distributed to the counties for litter abatement
5. The \$25 million bond proceeds will be devoted to remediation of old landfills.

### **Questions and Answers**

**Q.** What about old landfills that were not county owned?

**A.** Rob Daniell - If it is not a publicly owned facility the DWM is going to search for the responsible party and they will be responsible for the remediation. If there is no responsible party found, PRIDE funds will be used.

**Q.** Is that the same for municipalities?

**A.** Rob Daniell - The statute has a specific provision for City/County owned landfills. DWM will resume responsibility for closure and remediation of those, but they are eligible for state assistance.

**Q.** How is the ranking for the landfills going to be done?

**A.** Rob Daniell - Criteria will be established based the presence of environmental concerns. Priority will be given after criteria have been identified.

**Q.** How many sites will be addressed with the \$25 million?

**A.** Some landfills will require leachate control systems to be installed and caps and that can run in the millions of dollars. There is no specific number of sites that can be cleaned up based on the amount, but I think it will be approximately 10 to 15 major landfill closures.

**Q.** Concerning the Georgetown (Brier Hill subdivision that was built on top of an old landfill) will the city be able to use the PRIDE fund to assist in the cleanup?

**A.** Rob Daniell - There was a major discussion about instances where it appears that this bill would actually penalize counties that did the responsible thing and counties that procrastinated and did not clean up old municipal landfills would be rewarded. It is unfortunate, but if your questions is 'will Georgetown recoup any of its money,' the answer at this time is no. The amounts that the city and county spent will not be refunded. If there are additional needs and that landfill is on the ranking system, certainly it would be illegible for future money.

**Q.** Has there been an estimate done as to how much each household garbage bill will increase based on the \$1.75 surcharge?

**A.** Rob Daniell - On average, it would increase the typical household 30 cents a month.

**Q.** As far as the litter funds in HB 174 from the municipalities, the \$5 million amount that is given to counties, you said there is a 25 percent match that the counties have to undertake to receive financial assistance?

**A.** Yes, this goes for illegal dumps and any litter activities. There is a provision that the 25 percent can be waived if the NREPC determines that the county is performing to a standard that justifies waiving that. For example if the county has a high participation rate in the solid waste collection program, that may be one avenue to have that 25 percent waived.

### **Status of old landfills in Kentucky**

Rob Daniell reported that at this time 628 potential old landfill sites have been identified through record searches and field visits. These sites include historical landfill sites, superfund sites, and newly discovered disposal sites that had been in existence for quite some time. These sites also include formerly permitted landfills that ceased operation before July 1, 1992. Of the 628 sites 55 have exposed waste or leachate outbreaks, 128 have not been physically located, and 56 have been properly closed.

### **Brownfields and Voluntary Environmental Remediation Program**

Mr. Daniell's next reviewed brownfields in Kentucky. Brownfields are areas that have not entertained redevelopment because of real or perceived problems associated with contamination. The state has participated in a federal brownfields program. Through the federal brownfields program, the state receives grant money to perform environmental site assessments of abandoned or publicly owned facilities to determine the presence of environmental concerns and the extent of contamination. Several cities in Kentucky have received grant money to move forward with characterization in brownfields including two in Morganfield, one in Winchester, one in Maysville, one in Frankfort, one in Owensboro and one in Owsley County. The U.S. EPA has also sponsored brownfield pilot projects in Louisville, Covington, and Newport to identify potential brownfield sites and to carry out characterization at selected sites. The Division of Waste Management acts as a point of contact to assist municipalities and private parties to identify resources to assist in redevelopment efforts.

In 2001 the Kentucky legislature passed the Voluntary Environmental Remediation Program (VERP) to promote the redevelopment of brownfields. The VERP program includes the following:

1. The main regulations with sections devoted to definitions, applicability, application procedures, site characterization plan, site characterization, site characterization report, corrective action options, corrective action plan, public notification, and corrective action completion report.
2. A technical document describing requirements/procedures for conducting risk assessments; Kentucky Risk Assessment Guidance (KRAG) which includes the tables that have the cleanup standards listed.
3. A technical document used in the industry; "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" third edition SW-846. This document is referenced to in other NREPC regulations

4. An application form for persons seeking to remediate a property under VERP and a Kentucky Monitoring Well Record form for reporting analytical results of groundwater investigations.

The new cleanup standards will apply to both VERP applicants and responsible parties required to conduct cleanups under KRS 224.01-400 and KRS 224.01-405 excluding emergencies. The NREPC has developed cleanup standards based on the latest, best science available along with guidance for using these standards. These proposed regulations establish a sequential set of criteria to determine whether or not an applicant or responsible party will be required to conduct an ecological risk assessment.

### **Question & Answers**

**Q.** Is the state going to do any kind of inventory of brownfields or is that up to the cities and counties to do?

**A.** Rob Daniell - It will be up to the cities and counties to do.

**Q.** Do you anticipate that most VERP applications will come from the private sector?

**A.** Rob Daniell - Yes, I'd say the majority of the sites would.

**Q.** Can a county make an application to VERP if they already have an ongoing cleanup plan underway?

**A.** Rob Daniell - responsible party can entertain making application to the VERP program regardless of what stage of cleanup they are in.

**Q.** Mike Jeggle, who is working on the brownfield inventory for Kenton County commented that one of the ways Kenton County wants to do the inventory is to look at the superfund files, the UST files and ask the people in the community, i.e. fire Marshals, police that may be aware of dumps, and aerial photography. How should we notify a landowner about our findings?

**A.** Rob Daniell – that would be up to the county – the landowner would likely be the party applying to the VERP program unless the county owned the property.

**Q.** Are existing sites under remediation eligible for VERP?

**A.** Rob Daniell – no.

### **State Superfund Sites**

Mr. Daniell next discussed state superfund sites. These are contaminated waste sites that are threatened public health or the environment. The program to cleanup abandoned waste sites is financed by the Hazardous Waste Management assessment fee imposed upon every person engaged in the generation of hazardous waste. This assessment fee was re-authorized for another two years in the 2002 legislative session. This authority to assess this fee has been extended five times since 1984 will expire June 30, 2004. This fee generates funds at approximately \$2.5 million a year. Several types of waste are exempted from the fee including special waste, waste oil, secondary handler wastes, spent material from air pollution control devices controlling emissions from coke manufacturing plants and wastewater regulated under the Clean Water Act. A new exemption was added in 2001 and applies to waste emissions of coal dust and coal slush from the primary production of steel in electric furnaces.

From 1992 to 2000, a total of 46 highly contaminated abandoned sites have been investigated and cleaned up along with approximately 300 emergency sites at an estimate cost of \$11 million at those sites. Future cleanups are planned at another 20 priority sites at an estimated cost of \$4.4 million. There are hundreds of other sites identified that may require cleanup in the future using hazardous waste management funds at an estimated cost of \$80 million. The NREPC first tries to identify the responsible party and have them cleanup the site before hazardous waste fund are used.

## **Question & Answers**

**Q.** Dennis Minks with the City of Louisville commented that the Louisville responds regularly to what they call ‘unknown substances’ along roadsides and street. He asked if there is any chance Louisville could recoup any part of its cost to this type of emergency response. There are no current provisions to local communities.

**A.** There is no such funding available from the state.

**Q.** Brian Bailey with Montgomery County asked how to get a list of superfund sites.

**A.** Rob Daniell - You can obtain this information by putting your request in writing and we will be happy to respond.

## **Maxey Flats Radioactive Waste Superfund Site**

On May 31 EQC visited the Maxey Flats Low-Level Radioactive Waste Superfund site. The Commission made several recommendations and requested Rob Daniell respond to these recommendations.

Mr. Daniell noted that the NREPC is at the point now where the transfer and maintenance of Maxey Flats is going to shift from the responsible party to the Commonwealth in the very near future. DWM is in the process of making sure that the interim remedy is completed to everyone’s satisfaction prior to the state assuming the responsibility for the ongoing maintenance of the site. The recommendations made by the EQC were addressed with the following responses.

### **1. Appropriate resources necessary to ensure adequate monitoring and analysis of data.**

**Response.** NREPC will continue to devote six full time positions to onsite staffing at Maxey Flats. In addition, nearly completed at the site is a new lab/office building.

### **2. Hold at least one public meeting per year for the next ten years.**

**Response -** The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) mandates a public meeting or "Open House" planned for each year.

### **3. Produce an informational fact sheet every six months and create a Maxey Flats web site to update the public on the status of the site.**

**Response -** The US EPA maintains a web site. DWM will contact the EPA about the Cabinet putting additional information on the web site. The address is <http://www.epa.gov/region4/waste/npl/nplky/maxfltky.htm>.

### **4. Testing of fish tissue for radionuclides at nearby water bodies.**

**Response -** The Cabinet is still evaluating the need for this. EQC noted that the public is concerned about this and the cabinet needs to conduct testing to allay fears.

### **5. Conduct periodic monitoring of the site’s forest ecosystems and place Gypsy moth traps adjacent to the site.**

**Response -**The DWM will discuss and coordinate with other agencies to determine the need.

### **6. Prepare a fire protection plan for the site and adjoining forestland.**

**Response -**The Cabinet agrees. DWM will contact the local Division of Forestry field office and request an inspection during which a fire protection plan will be created, including the pre-selection of potential fire breaks to protect the trees on the side slopes of the site.

### **7. Prepare an emergency response plan for the site.**

**Response -** The emergency response plan kept onsite will be updated annually.

**8. Take necessary steps to limit public access to the site to prevent vandalism.**

**Response** - The Cabinet will continue to take necessary steps to secure the site and will install postings as needed.

**9. Remove silt from the holding pond and take steps to prevent siltation in the future.**

**Response** - The Cabinet will implement best management practices as needed.

**10. Conduct a seismic study to determine risks posed by seismic activity at the site.**

**Response** - The cabinet will conduct a seismic study.

**Question & Answers**

**Q.** What about access to water lines? In case of a forest fire, where would the water come from?

**A.** There is a water line that comes to the site (for the building being constructed) and there will be water if need be for fire suppression.

**Q.** There is no guard on duty. Someone with a terrorist state of mind could really reek havoc with vandalism. Would a guard on duty and more fences help with that concern?

**A.** In comparison to other places, as a whole, Maxey Flats ranks low as a target for terrorist activity.

**Additional Questions, General Discussion and Comments**

**Q.** An audience member asked if the DWM has a map of the 55 old landfills that have either exposed waste or leachate outbreaks?

**A.** We don't but one could be created.

**Q.** Is there an environmental emergency on any of these sites?

**A.** No, they do constitute an environmental emergency. If there were, the Cabinet would use the environmental response team and the Hazardous Waste Management fund if necessary.

**Q.** Mr. Dennis Minks, city engineer with Louisville commented that if it is going to cost people in Louisville more to dispose of waste, illegal dumping will grow in the alleys and byways. In that case, the city of Louisville will probably be one of the largest funders of the tipping fee. The vast majority of money it will have to pay additionally to that won't be coming back to Louisville. Has any one contemplated what that is going to do?

**A.** This issue came up during the session and no one came forward. The Legislators spoke with House Bill 174, now the Cabinet is implementing it. What might be done is during the next legislative session, show documentation to Legislators and the impact it is having and suggest how to deal with it. But for now, we have to carry that law.

After all questions were exhausted, the Chair thanked the Division of Waste Management. A ten-minute break was taken before continuing with the meeting.

**Business Meeting**

**Coal Mine Mapping and Impoundments**

EQC commissioners briefly discussed the recent rescue of coal miners from a mine in Pennsylvania and the issue of inaccurate maps. General consensus of the commission was that more attention to mapping is needed and more state efforts are needed to phase out coal waste impoundments. Commissioners directed Executive Director, Leslie Cole to draft a letter to Governor Paul E. Patton to (a) convene a blue ribbon task force to further explore options to promote alternatives to coal mine impoundments and opportunities to improve coal mine mapping in Kentucky; (b) to set standards for mine surveying and mapping in

Kentucky and recommended additional measures to support technologies that can better detect mine voids to prevent future accidents like that of Martin County and (c) to urge Congress, MSHA, and OSM to move forward with implementing the National Research Council on Coal Waste Impoundments recommendations in a deliberate and timely fashion. Copies of this letter will be sent to Secretary Lauriski, Assistant Secretary of Labor for Mine Safety and Health; Crit Luallen, Secretary of Governor's Executive Cabinet; James Bickford, Secretary for NREPC; and Jeffrey Jarrett, Director for the Office of Surface Mining.

#### **Transportation Cabinet Public Participation Resolution**

The Commission also reviewed a draft resolution concerning the need to strengthen public participation within the Dept. of Transportation. The issue was brought to the commissioner's attention after a EQC public meeting held in Morehead on May 30. Several residents expressed concern about an I-64 bypass that is planned to be routed through the Daniel Boone National Forest. The commission postponed action on the resolution until its August meeting.

#### **Budget**

The budget report for June 30 2002 with 100 percent of the fiscal year lapsed shows a zero balance in the operating. Restricted funds carried over for 2002-2003 is \$3,324.47.

#### **Mailing List**

Erik Siegel, Assistant Director, gave an update of the mailing list being compiled for EQC by the Office of Information Systems. OIS has been working on it since February and we still do not have a usable product.

Mr. Siegel also briefed the commission on staff's efforts to convert newsletter subscribers to email to reduce postage and copy costs. To date, 248 of the 4,000 subscribers have signed up for email newsletters. EQC's goal is to convert 1,000 subscribers to email.

#### **Next EQC Meeting**

The next meeting is set for August 22 in Frankfort to discuss the Clean Water Act.

Bob Riddle made a miscellaneous announcement about the upcoming meeting of the Bluegrass Water Supply Consortium. Their first public meeting will be August 6 at Henry Clay High School in Lexington from 6 PM to 9 PM.

With no further business, the meeting adjourned at 3 p.m.

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Signed

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Dated